

RECEIVED
CENTRAL FAX CENTER

DEC 21 2005

AFTER FINAL: ATTENTION TRAMMEL, J.

PTO/SB/97 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office
TO USPTO FAX NO(S): 571-273-8300

on December 21, 2005
Date



Signature

Eugene H. Valet

Typed or printed name of person signing Certificate

31435

Registration Number, if applicable

904-261-9992

Telephone Number

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

- (1) Response to second Notification of Non-Complaint Appeal Brief - 3 pp
- (2) COPY of Notification of Non-Compliant Appeal Brief - 2 pp

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 18 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

BEST AVAILABLE COPY

RECEIVED
CENTRAL FAX CENTER

DEC 21 2005

1 AFTER FINAL COMMUNICATION

2
3 URGENT ATTN: James Trammel, Supervisory Examiner, Art Unit 3621

4
5
6 PETITION
7 IN RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF
8 & SUPPLEMENTAL TO APPEAL BRIEF

9
10 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

11
12 UNDER GRANTED PETITION TO MAKE SPECIAL

13
14 GROUP ART UNIT: 3621

15
16 EXAMINER: Backer, Firmin

17
18 INVENTOR(S): Triola, C.R.

19
20 SERIAL NO.: 09/833,390

21
22 CONF. NO.: 3769

23
24 FILED: April 11, 2001

25
26 SUBJECT: Method and Apparatus for Processing Escrow Transactions

27
28 SECOND PETITION TO INVOKE SUPERVISORY AUTHORITY UNDER 37 C.F.R. 1.181

29
30 TO: THE COMMISSIONER FOR PATENTS

31 ATTN: James Trammel, Supervisory Examiner, Art Unit 3621

32
33 Appellant has received the attached, second Notification of Non-Compliant Appeal Brief, mailed
34 12/14/2005, see attached Exhibit Triola A2.

35
36 Contrary to a twice filed form PTO/SB122, this second Notice was sent to an invalid previous
37 Correspondence Address. It is respectfully requested that this Change of Correspondence
38 Address be made effective immediately. It is respectfully requested that the second
39 Notification either be reissued to the appropriate address and with further explanation of its
40 content, or be completely rescinded as already satisfied based on the following.

41
42 In the second Notification, Examiner Backer has checked boxes 8, 9 and 10. Under number 10,
43 "Other," Examiner Backer states inter alia: "Applicant needed provided [sic, needs to provide?]
44 information on 9 and 10 whether or not they exist."

45 //

DOCKET NO. CRT044US / 952817-8

Page 1 of 3

BEST AVAILABLE COPY

1 The Examiner's statement is not understood. How can one provide information that does not
2 exist? Moreover, Appellant has already complied with checked box 9.

3
4 On August 11, 2005, Appellant filed his RESPONSE TO NOTIFICATION OF NON-COMPLIANT
5 APPEAL BRIEF in reply to a first Notification which similarly checked box 9 only. The
6 Response was filed, despite a verbal confirmation from Supervisory Examiner J. Trammel that it
7 was understood to be withdrawn, because a Petition in that matter was not issued until the 30-
8 day deadline.

9
10 That RESPONSE included a replacement brief along with an explanation of the changes,
11 including the "addition of Page 62 of 62" providing an Appendix page titled "RELATED
12 APPEALS AND INTERFERENCES APPENDIX,"compliant with the USPTO request for a page
13 stating the fact that "There are no related appeals nor interferences." (as also stated on page 3
14 of the Brief). Seemingly, Examiner Backer has ignored Appellant's August 11, 2005 filing.

15
16 That RESPONSE also filed a copy of the original SB/97 Correspondence Address change.

17
18 With respect to box 8, the cited regulation 41.37(c)(1)(ix) requires an "Evidence Appendix."

19
20 Said Evidence Appendix is and has from the first also been already included in the Brief, page
21 61, with included originally filed Exhibits appropriately stamped as associated with the Appellant
22 Triola and as referred to in the text of the Brief with statements as to their context to Appellant's
23 arguments. There are no Affidavits relied upon under Sec. 1.130, 1.131 or 1.132 in the Appeal
24 Brief. Examiner Backer gives no indication as to any inadequacy of the already provided
25 Appendix and Exhibits.

26
27 The second Notification is in error or, at the least, incomprehensible as not providing an
28 explanation of the Examiner's opinion of what is still allegedly missing. The Notification requires
29 that: "to avoid dismissal of the appeal, applicant must file a complete new brief...". Such a "new
30 brief" would be identical to the brief on file. Therefore, appellant respectfully Petitions the Office
31 to immediately to exercise Supervisory Authority to:

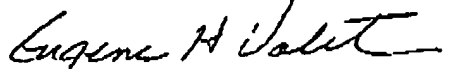
- 1 (1) Withdraw the 12/14/2005 Notification of Non-Compliant Appeal Brief, and
2 (2) Remove the requirement that "applicant must file a complete new brief."

3
4 In view of the 30 day time period set to expire on Jan. 14, 2005, appellant respectfully requests
5 that a written response to this Petition be sent by facsimile transmission to the undersigned as
6 soon as possible and no later than January 10, 2006, to avoid the need of filing an exact
7 duplicate of the on file Appeal Brief which does nothing to advance prosecution and under
8 MPEP 904.03, "...adds to the burden and cost of prosecution. ..."

9
10 Questions or a teleconference may be directed to the undersigned at 904-261-9992, EST
11 business hours 9 a.m.-11 a.m. and 1 p.m.-4 p.m.

12
13 Date: 21 DEC 2005

Respectfully submitted,

14
15
16 

17 BY Eugene H. Valet
18 Attorney Reg. No. 31435
19 Richard Berg, Ladas & Parry
20 Fax: 1-323-934-0202
21 Tel.: 1-323-934-2300
22
23

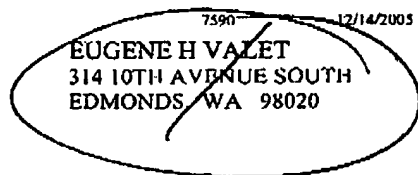
//



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,390	04/11/2001	C. Richard Triola	CRT044UT	3769



EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/833,390

Applicant(s)

TRIOLA, C. RICHARD

Examiner

FIRMN BACKER

Art Unit

3621

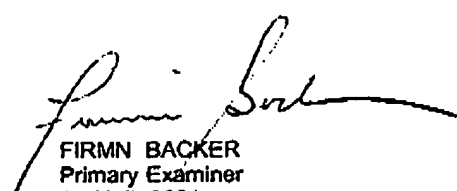
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 15 August 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

Applicant needed provided information on 9 and 10 whether or not they exist.


FIRMN BACKER
Primary Examiner
Art Unit: 3621